

ECONOMIC DEVELOPMENT ARTICLE

TITLE 6: ECONOMIC DEVELOPMENT TAX INCENTIVES.

JOB CREATION TAX CREDIT.

§ 6–301. Terms Defined.

- (a) In this subtitle the following words have the meanings indicated.
- (b) “Credit year” means the taxable year in which a qualified business entity claims the credit allowed in accordance with § 6–304(a) of this subtitle.
- (c) (1) “Qualified business entity” means a person conducting or operating a trade or business in the State that is certified in accordance with § 6–303 of this subtitle as qualifying for the tax credit under this subtitle.
- (2) For a person engaged in a business activity described in § 6–303(b)(2)(xiii) of this subtitle, “qualified business entity”:
 - (i) includes a person owning or operating the multi–use facility in which the entertainment, recreation, cultural, or tourism–related activities are operated; and
 - (ii) does not include any separate entity that leases retail space at the facility.
- (d) (1) “Qualified position” means a position that:
 - (i) is full–time and of indefinite duration;
 - (ii) pays at least 150% of the federal minimum wage;
 - (iii) is located in the State;
 - (iv) is newly created as a result of the establishment or expansion of a business facility in a single location in the State; and
 - (v) is filled.
- (2) “Qualified position” does not include a position that is:
 - (i) created when an employment function is shifted from an existing business facility of a business entity in the State to another business facility of the same business entity if the position is not a net new job in the State;
 - (ii) created through a change in ownership of a trade or business;
 - (iii) created through a consolidation, merger, or restructuring of a business entity if the position is not a net new job in the State;
 - (iv) created when an employment function is contractually shifted from an existing business entity to another business entity in the State if the position is not a net new job in the State; or
 - (v) filled for a period of less than 12 months.
- (3) For a person engaged in a business activity described in § 6–303(b)(2)(xiii) of this subtitle, “qualified position” does not include any position other than a position engaged in:
 - (i) the operation of entertainment, recreation, cultural, or tourism–related activities within the multi–use facility; or

(ii) management, marketing, building maintenance, hotel services, or security for the multi-use facility.

(e) “Revitalization area” means:

- (1) an enterprise zone designated by the Secretary under § 5–704 of this article;
- (2) an enterprise zone designated by the United States government under 42 U.S.C. §§ 11501 through 11505;
- (3) an empowerment zone or enterprise community designated by the United States government under 26 U.S.C. §§ 1391 through 1397F; or
- (4) a designated neighborhood, as defined in § 6–301 of the Housing and Community Development Article.

(f) “State priority funding area” means:

- (1) a municipal corporation;
- (2) Baltimore City;
- (3) a designated neighborhood, as defined in § 6–301 of the Housing and Community Development Article;
- (4) an enterprise zone designated by the Secretary under § 5–704 of this article;
- (5) an enterprise zone designated by the United States government under 42 U.S.C. §§ 11501 through 11505;
- (6) those areas of the State located between Interstate Highway 495 and the District of Columbia;
- (7) those areas of the State located between Interstate Highway 695 and Baltimore City;
- (8) no more than one area in a county designated by the county as a priority funding area under § 5–7B–03(c) of the State Finance and Procurement Article; and
- (9) that portion of the Port Land Use Development Zone, as defined in § 6–501 of the Transportation Article, that has been designated as an area appropriate for growth in a county comprehensive master plan.

§ 6–302. Creation of the Tax Credit.

The General Assembly intends that the purpose of the job creation tax credit authorized under this subtitle is to increase the number of new jobs in the State by encouraging:

- (1) the expansion of existing private sector enterprises; and
- (2) the establishment or attraction of new private sector enterprises.

§ 6–303. Tax Credit Eligibility; Certification.

(a) (1) The Secretary or the Secretary’s designee shall certify a person as a qualified business entity if the person meets the requirements of this section.

(2) A person may not be certified as a qualified business entity unless the person notifies the Department of its intent to seek certification before hiring any qualified employees to fill the qualified positions necessary to meet the requirements of subsection (b)(1) of this section.

(b) To be eligible for a tax credit under this subtitle, a person shall establish or expand a business facility in the State that:

(1) during any 24-month period creates at least:

(i) 60 qualified positions;

(ii) 30 qualified positions if the aggregate payroll for the qualified positions is greater than a threshold amount equal to the product of multiplying 60 times the State's average annual salary, as determined by the Department; or

(iii) 25 qualified positions if the business facility established or expanded is located in a State priority funding area; and

(2) is primarily engaged in:

(i) manufacturing or mining;

(ii) transportation or communications;

(iii) agriculture, forestry, or fishing;

(iv) research, development, or testing;

(v) biotechnology;

(vi) computer programming, information technology, or other computer-related services;

(vii) central services for a business entity engaged in financial services, real estate services, or insurance services;

(viii) the operation of central administrative offices;

(ix) the operation of a company headquarters other than the headquarters of a professional sports organization;

(x) the operation of a public utility;

(xi) warehousing;

(xii) business services, if the business facility established or expanded is located in a State priority funding area; or

(xiii) entertainment, recreation, cultural, or tourism-related activities in a multi-use facility located within a revitalization area if the facility:

1. generates a minimum of 1,000 new full-time equivalent filled positions in a 24-month period; and

2. is not primarily used by a professional sports franchise or for gaming.

(c) To be certified as a qualified business entity for a tax credit under this subtitle, a person shall submit to the Department an application that specifies:

- (1) the effective date of the start-up or expansion;
 - (2) the number of full-time employees existing before the start-up or expansion and the payroll of the existing employees;
 - (3) the number of qualified positions created and qualified employees hired and the payroll of the new qualified employees; and
 - (4) any other information that the Department requires by regulation.
- (d) When determining whether a business facility is engaged in a qualifying activity described in subsection (b)(2) of this section, the Department shall consider the definitions set forth in the North American Industry Classification System.
- (e) The Department may require that any information provided under subsection (c) of this section be verified by an independent auditor that the qualified business entity selects.

§ 6-304. Tax Credit Amount.

- (a) (1) A qualified business entity may claim a tax credit in the amount determined under this section.
- (2) A qualified business entity shall submit to the appropriate State units, with the tax return on which the credit is claimed, certification from the Department that the business entity has met the requirements of this subtitle and is eligible for the credit.
- (b) (1) Except as provided in this section, the credit earned under this section:
- (i) for qualified employees working in a facility not located in a revitalization area, is the lesser of:
 - 1. \$1,000 multiplied by the number of qualified employees employed by the qualified business entity during the credit year; and
 - 2. 2.5% of the wages paid by the qualified business entity during the credit year to the qualified employees; and
 - (ii) for qualified employees working in a facility located in a revitalization area, is the lesser of:
 - 1. \$1,500 multiplied by the number of qualified employees employed by the qualified business entity during the credit year; and
 - 2. 5% of the wages paid by the qualified business entity during the credit year to the qualified employees.
- (2) The credit earned by a qualified business entity under this subtitle may not exceed \$1,000,000 for any credit year.
- (c) (1) The credit earned under subsection (b) of this section shall be taken over a 2-year period, with one-half of the credit amount allowed each year beginning with the credit year.
- (2) The same credit cannot be applied more than once against different taxes by the same taxpayer.

(3) If the credit allowed under this subtitle exceeds the total tax otherwise due from a qualified business entity in a taxable year, the qualified business entity may apply the excess as a credit for succeeding taxable years until the earlier of:

- (i) the full amount of the excess is used; or
- (ii) the expiration of the 5th taxable year from the credit year.

(4) The credit under this subtitle may not be carried back to a preceding taxable year.

§ 6–305. Recapture Provisions.

(a) If, during any of the 3 years after the credit year, the number of qualified positions of the qualified business entity falls more than 5% below the average number of qualified positions that existed during the credit year on which the credit was computed, the credit shall be recaptured as follows:

(1) the credit shall be recomputed and reduced by the percentage reduction of the number of qualified employees;

(2) the recomputed credit shall be subtracted from the amount of credit previously allowed; and

(3) the qualified business entity shall pay the difference as taxes payable to the State for the taxable year in which the number of qualified positions falls more than 5% below the average number of qualified positions during the credit year.

(b) If, during any of the 3 years after the credit year, the average number of qualified positions falls below the applicable threshold number of positions required under § 6–303(b)(1) of this subtitle, all credits earned shall be recaptured.

(c) (1) During the 3 taxable years after the credit year, a qualified business entity shall provide any information required by the Department in regulation to verify that the qualified business entity is not subject to subsection (a) or (b) of this section.

(2) The Department may require that any information provided under this subsection be verified by an independent auditor that the qualified business entity selects.

§ 6–306. Confidentiality.

(a) The Comptroller or other appropriate unit shall share with the Department any information received from a qualified business entity about eligibility for a credit allowed under this subtitle.

(b) Information that is received under subsection (a) of this section is subject to the confidentiality requirements established by statute or regulation that apply to the Comptroller or unit that receives the information.

§ 6–307. Reporting Requirement.

On or before December 31 of each year, the Department shall report to the Governor and, in accordance with § 2–1246 of the State Government Article, to the General Assembly on the business entities certified as eligible for job creation tax credits in the preceding fiscal year.